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ABSTRACT

This second report of the Commission on Public School Personnel Policies in Ohio is concerned with teacher tenure in the state of Ohio and need for changes in the tenure law. The basic positions of the commission are that teachers should be protected against arbitrary and unwarranted action by their employers but that professional incompetence cannot be tolerated for any reasons. Tenure should not be viewed as guaranteed life employment, according to the commission; it has been viewed as such because little effort has been made to terminate continuing contracts for cause. This commission report stresses the need for physical and mental health in teachers, certified by examinations, and the possible need for changes in a teacher's continuing status (presently, continuing status ends at age 70, but a survey of superintendents indicated performance decline for teachers of advanced age). This report suggests possible mandatory retirement at 65, with the option for valuable teachers to remain on a part-time basis. This report also supports Ohio law that does not require that teachers with limited contracts be given reasons for dismissal. Appendixes include sections on certificate and contracts of Ohio public school teachers and on tenure in other states. (Related document is SP 006 262.) (JA)

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TEACHER TENURE

The Second Report of the

COMMISSION ON PUBLIC SCHOOL PERSONNEL POLICIES IN OHIO

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Preface

This is the second report of the Commission on Public School Personnel Policies in Ohio to the people of Ohio. Its aim is to bring about a better understanding of teacher tenure and to set forth constructive steps that can be taken to improve the system of tenure. In particular the Commission hopes that the report will dispel the common idea that tenure means guaranteed lifetime employment.

The Commission's first report, "Organizing for Learning," presented a plan for improving student learning by better use of teaching staff.

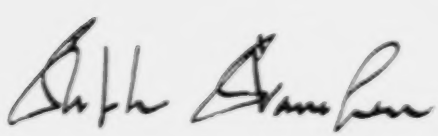
The nine Ohio private and community foundations that appointed and funded the Commission have a long history of concern for public school education and a fundamental belief that results of the educational process depend in great part on the basic competence, training, and utilization of the teaching staff. They established this statewide commission of laymen for the purpose of determining ways of achieving optimum quality and use of staff and enlarging the attractiveness of teaching as a career.

Much research on public school personnel policies has been done by competent professional people. Many constructive ideas for change are in the minds of teachers and administrators. The Commission's role is one of synthesis of the research, experience, and judgment of qualified people; clarification of issues; and advocacy of indicated courses of action. It hopes to provide guidance and motivation to a public deeply concerned about the effectiveness of its public schools.

The Commission represents a wide range of points of view and came together with no political intent regarding legislative courses of action. Its aim is to look generally and objectively at ways of improving public school education within the scope of

its particular interest in personnel policies.

The Commission expresses its appreciation to the many teachers, administrators, and authorities on school law and administration who have generously provided constructive counsel to the Commission and to Hester Bensinger, President, Ohio Association of Classroom Teachers; Stayner F. Brighton, Executive Secretary, Ohio Education Association; Martin W. Essex, Superintendent of Public Instruction, Department of Education; Willard E. Fox, Executive Director, Ohio School Boards Association; Murl E. Huffman, Teacher, West Carrollton High School, and former President, O.E.A.; Raymond D. Kikta, President, Ohio Federation of Teachers, and Teacher, Wilbur Wright Junior High School, Cleveland; and Paul A. Miller, President, Buckeye Association of School Administrators and Superintendent, Cincinnati, for their help in reviewing findings and conclusions of the Commission.



Stephen Stranahan
Chairman

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I BASIC POSITIONS

There is much public and professional confusion about what Ohio Law calls "the continuing service status of teachers," commonly referred to as "tenure." There is also wide consensus that the present system is not working to the best advantage of either students or teachers in Ohio. It is time to put the problem in proper perspective, clear up the confusion, and make whatever changes will be in the best interests of public school education in Ohio. If this is done, Ohio will be a leader, because there is little satisfaction with the workings of tenure throughout the country.

Findings and conclusions of this report are based upon a survey of all school superintendents in Ohio; depth interviews with school superintendents, principals, and personnel directors in forty districts throughout the State; conversations with school teachers, school board members, authorities on educational administration, attorneys, and physicians; analysis of the laws of Ohio and comparable states; and review of court decisions and pertinent literature.

The Commission on Public School Personnel Policies in Ohio takes five basic positions regarding the continuing service status of teachers:

1. **Teachers should be protected against arbitrary and unwarranted action by their employers.**
2. **Professional incompetence cannot be tolerated for any reason.**
3. **Tenure should not be viewed by teachers or administrators as guaranteed lifetime employment.**
4. **Major changes are needed in the tenure law.**
5. **School management should improve its administration of tenure.**

II PROTECTION OF TEACHERS AND STUDENTS

The Commission believes that the State should protect all teachers against arbitrary and unwarranted action by their boards of education. They should be particularly protected against unfair action to terminate employment resulting from undue pressure of parents, the poor judgment of supervisors, discussion of controversial issues in their classes, and their personal political actions. They should work in an atmosphere that encourages constructive criticism and suggestions for change and innovation.

Teachers should feel secure in terms of intellectual freedom and should be challenged by the opportunity to play a key role in shaping educational policy. In return, they should demonstrate ability to work constructively with their school organizations and communities.

The Commission views teaching as an awesome social responsibility that calls for unremitting effort to achieve optimum learning relationships between teachers and students. There is no place for incompetent teachers in public school education.

The Commission believes that the large majority of teachers in Ohio are competent, dedicated to their calling, and anxious to meet the changing needs of our society. On the other hand, these teachers know better than anyone else that out of 100,000 teachers there always have been and will be the few who should *not* be teaching, and that the number is too great to be tolerated as "something to be expected." Even a small number looms large when multiplied by the number of children who suffer. Teachers also know that aside from the effect on students, poor teachers are doing a disservice to themselves and the profession of teaching.

Refusal to put up with incompetent teachers despite mitigating circumstances is not unreasonable in light of the responsibility of a teacher. It *is* unreasonable for teachers who should not be teaching to insist upon being allowed to teach. It *is* unreasonable if sympathetic bystanders or groups of teachers press

for the continued employment of these teachers.

Any person entering the occupation of teaching should do so with full knowledge of the standards that must be met during each year of employment. There can be no lowering of standards of mental, physical, and emotional health, and instructional competence. Furthermore, there are very few opportunities in a school system for "grounding" a teacher, taking him away from his basic job of teaching and finding something else for him to do.

The welfare of children must always be considered ahead of the financial or psychological needs of the teacher for a job. Furthermore, hard decisions may have to be made that place the present needs of children ahead of past years of loyal teacher service. The major consideration in continuing the employment of a teacher should be the teacher's present ability to teach. This approach is essential to the status of the teaching profession as well as the welfare of students.

Teachers should not be permitted to teach when physical and mental difficulties seriously impair their energy, alertness, and self-control. Teachers also should not be permitted to teach in a district when they consistently fail to meet that district's minimum standards of teaching performance for reasons other than physical and mental health. They should be expected to grow with their peers and stay abreast of changes in needs of students, learning materials, and teaching methods.

There are several reasons why incompetent teachers are found in today's classrooms. Mistakes may have been made in their initial employment. There may have been changes in their mental, physical, and emotional health during their careers. Some teachers may have been unable to adjust to changes in the type and needs of students to be taught and have failed to keep up with new ways of teaching. Many teachers have faced up to their own problems and have either been able to solve them or have resigned their teaching positions. Unfortunately, some teachers fail to understand their problems and others are unwilling to admit them.

Every effort should be made to prevent incompetent people from entering teaching or staying in teaching beyond a reasonable probationary period. This is primarily the responsibility of

teacher training institutions, employment officers, and supervisors of beginning teachers. The fact remains, however, that mistakes undoubtedly will be made in employing some teachers and other teachers will lose their professional competence over a period of years. This calls for sound procedures for assessing the capability of teachers and for terminating the employment of any teacher found incompetent regardless of certification or years of service.

III WHAT IS TENURE?

Many people believe that teachers are given a "lifetime contract" when they are granted "tenure." Some say this is undue favoritism to one group of people not shown to others. There is no evidence, however, that lawmakers intended to protect teachers with lifetime contracts. It is important to understand first what the law is and then to determine why it has achieved results other than those intended.

The following is a description of what is called "the continuing service status of teachers" in the Ohio Revised Code. It is described in more detail in the Appendix.

> A teacher may be given a continuing contract which gives the teacher continuing service status after acquiring a professional or a permanent Ohio teacher's certificate and serving a three-year probationary period in a district. The professional certificate requires a bachelor's degree plus eighteen additional semester hours of credit and the permanent certificate requires a master's degree. When a teacher is eligible for tenure, he must either be given a continuing contract or refused any contract with the exception that he may be given one more limited contract for one or two years provided reasons are given directed toward the teacher's professional improvement.

Termination of the Continuing Contract

> When termination of a continuing contract is contemplated, the school board is required to notify the teacher in writing of its intended action with full specification of grounds for such consideration. The grounds set forth in the statute are "gross inefficiency or immorality; willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause."
>
> The teacher has 10 days in which to request a hearing before the board. If no request is made, the board may proceed with formal action to terminate the contract. If the teacher does desire a hearing, the board is required to set a time for the hearing within 30 days after the

teacher makes the written request.

No hearing can be held during the summer without the consent of the teacher. The hearing is to be private unless the teacher wants a public hearing. The hearing is to be conducted by a majority of the board members and confined to the grounds given for termination. The board is required to provide for a complete stenographic record of the proceedings. The board may suspend a teacher pending final action to terminate his contract.

While the hearing is to be an administrative proceeding, rules of courtroom fair play are expected to be followed. Both parties may be present at the hearing and be represented by counsel. They may require witnesses to be under oath, cross-examine witnesses, and require their presence by subpoena.

Decision by the Board

After the hearing, the board by a majority vote, may order termination. If the decision of the board is against termination of the continuing contract, the charges and the record of the hearing are to be destroyed, and if the teacher has been suspended, he is to be paid his full salary for the period of his suspension.

Appeal from Hearing

Any teacher whose contract has been terminated may appeal to the Court of Common Pleas in the county in which the school is located within thirty days of the school board's decision. The Court's action must be limited to a judicial review of the proceedings of the school board, i.e., to make certain that the proceedings before the board were legally regular and not arbitrary, oppressive, unreasonable, or fraudulent. In other words, the Common Pleas Court may reverse an order of termination where it finds that the order is not supported by or is against the weight of evidence. The point being that the General Assembly did not intend the Court to begin the hearing procedure all over again.

Either the board or the teacher has the right to make further appeal.

What Gives Tenure the Appearance of Guaranteed Lifetime Employment?

The answer is that little effort has been made to terminate continuing contracts for cause. Four hundred and thirty-eight, or about 70 percent of all superintendents in Ohio, responded to a Commission survey on tenure. Of these, 93 percent reported that there have been no board hearings regarding termination of teachers on continuing contracts in their districts in the last five years. Furthermore, 74 percent of the superintendents reported that no teachers on continuing contracts have resigned at the request of the district in the last five years. Against this record of inaction, a representative group of superintendents interviewed in depth by the Commission staff stated that they have teachers in their employ who are patently incompetent for reasons of physical, mental, and emotional difficulties, attitudes toward children, or lack of teaching ability.

Few cases of termination of continuing contracts have been appealed to the courts in Ohio. During the history of the tenure law dating back to 1941, there have been only seven reported decisions of the Court of Common Pleas, and only three since 1960.

The failure to take action against incompetent teachers results from weaknesses in provisions of the present law governing the continuing service status of teachers and from laxity in the administration of teacher employment. In effect, the law serves a purpose for which it does not seem intended, and inaction by administrators has enhanced the lifetime aspect of the continuing contract.

IV HEARING PROCEDURE

The greatest weakness in the law governing the continuing service status of teachers seems to be the procedure it stipulates for hearing cases of teachers who have been notified of intent to terminate their continuing contracts. This procedure is unfair to teachers and makes unreasonable demands on the time and capability of boards of education.

Under the law, a board of education notifies a teacher of *its* intent to terminate the teacher's contract. Because the act of notification of intent to terminate has serious consequences in itself, it calls for careful investigation by the board before a decision is reached. The board, having met this obligation for thorough investigation before notification of the teacher, is then in a difficult position to reverse its decision.

It is not only unfair for the board to be the jury weighing the merit of its own decisions, but it is highly questionable that it should also serve as judge and prosecutor. Few board members are qualified by training to carry out the role of judge in complex legal procedures. If they err in the mechanics of conducting the hearing, their final decisions may be overruled by the courts solely on procedural grounds.

The lawyer representing the board in a termination hearing may also counsel the board on the conduct of the hearing. Under this arrangement, it is possible that he could both object to actions of the teacher's lawyer and advise the board on how to rule on his objections.

The most compelling reason expressed by many superintendents for not acting to terminate continuing contracts of teachers is their unwillingness to subject their boards to the heavy demands on their time that a hearing may make. Board members receive no salary for their work and most of them have full-time outside jobs. A board hearing of a case of termination can easily be prolonged to take over 30 hours which is considerably beyond the amount of extra time any board member should be asked to give.

The Commission recommends:

1. **That the hearing now provided by law be held by three referees instead of the board. One referee would be selected by the teacher, one by the board, and the third by the first two. In the event they are unable to agree on the third party, he would be chosen as specified by statute. This might provide for the selection to be made by the Chief Justice of the Court of Common Pleas in the county of the school district or by the State Superintendent.**
2. **That the use of referees be mandatory.**
3. **That referees be appropriately compensated by boards of education for their time as well as reimbursed for their expenses.**
4. **That boards of education be prohibited from rehearing the case and securing additional testimony.**

Superintendents surveyed are about equally divided in their opinion on the use of referees to hear cases of teachers whose continuing contracts may be terminated. Depth interviews in the field, however, brought out the fact that since many of them have had no experience with hearings, they had little understanding of the complexity of the legal hearing procedure or the potential amount of time that can be taken up by a persistent defendant.

Three referees are recommended rather than one in the belief that this will provide for valuable exchange of opinion and sharing of judgment.

The use of referees should be mandatory for three reasons. First, if the principle of using referees is sound, it should be required for all districts. In the second place, some boards may be reluctant to ask for referees for fear of public criticism. Lastly, a teacher requesting referees may prejudice his later standing with the board with respect to future work opportunities by having indicated a lack of confidence in the board.

A strong argument can be made for requiring that the deci-

sion of the referees be binding upon the board of education. There is much objection in principle, however, to this erosion of the authority of a board which is the representative body of the community. On the other hand, a rehearing by the board would tend to defeat the purpose of using referees.

The Commission has concluded that until experience with the use of referees is gained and a different course seems desirable, boards of education should retain the power of final decision regarding the termination of continuing contracts. As a practical matter, it seems doubtful that a board would overrule a decision of referees that was favorable to a teacher. Such action could greatly heighten community divisiveness which is incipient in most cases of teacher termination.

V PROFESSIONAL COMPETENCE AND TENURE

Gross inefficiency is one of the statutory reasons for terminating continuing contracts. It has been interpreted by the courts as embracing considerations of professional competence. However, there are questions today in some legal circles as to whether gross inefficiency is educationally substantive or relates only to personal behavior. It would be helpful to include explicitly the consideration of professional competence in the reasons for termination of a continuing contract. There is obviously no justification for granting a contract which is to be continuous as long as personal conduct is tolerable regardless of failure to meet reasonable standards of professional competence. Furthermore, even if inefficiency is understood to include teaching incompetence, the word "gross" is subject to wide interpretation.

There are many difficulties in assessing the total results of a teacher's performance. For example, some results may not even be accurately appraised for several years after the teacher's exposure to individual students. It should be possible, however, to establish minimum standards of professional competence. These would include: knowledge of developing information in subject fields; knowledge of developing methods of teaching; ability to convey new knowledge and apply new methods; understanding of the changing needs of students for information and guidance; adaptability to different types of students; constructive faculty relationships.

The establishment of minimum standards for the State and for each district is a step that teachers and their organizations should welcome and support. The work at State level can best be done by a task force of teachers, administrators, and authorities in the field of education under the direction of the State Department of Education. The great need for maintaining acceptable levels of competence makes it imperative that a constructive effort be undertaken at both levels.

The Commission recommends:

1. **That failure to meet minimum standards of teaching competence established by the employing school district after the teacher has been advised and given a reasonable period of time to make required improvements be included in the reasons for terminating a teacher's continuing contract.**
2. **That the State Department of Education develop minimum standards generally understood and agreed to by teachers and school boards as a guide for all districts.**
3. **That each district establish its own standards based upon the expectations of its community and its accepted styles of teaching as well as those of the State.**

Minimum standards of any district would obviously be based upon an assessment of the current performance of most of its teachers as the norm below which teaching is unacceptable. With benchmarks of demonstrable local performance, it should be possible to find means of clearly identifying those few teachers who fall below minimum standards.

VI PHYSICAL AND MENTAL HEALTH OF TEACHERS

A board of education may retire a teacher for reasons of permanent physical and mental disability. Teachers so retired receive benefits from the State Teachers' Retirement System.

Administrators have cited senility and emotional instability as difficulties frequently experienced by teachers and have indicated their inability to deal effectively with these problems. The Commission believes that a forthright position should be taken in acting on cases of senility. When deterioration of mental faculties is indicated by such things as loss of memory and irrationality, appropriate steps should be taken to determine the true condition by physical and psychiatric examination, and if there is serious damage, a case should be made for permanent disability retirement.

Emotional conduct detrimental to students can be documented in terms of its effect on students. This is an administrative judgment that can be made without psychiatric examination, although such examination would be helpful. In these cases, administrative action could be taken to terminate the teacher for reasons of professional incompetence.

The Revised Code provides that without request of a teacher, a board may grant a leave of absence to any teacher because of mental or physical disability and provides for the teacher to have a hearing on such unrequested leave of absence. The leave may be renewed by the board as circumstances warrant. A medical examination would be required to confirm mental or physical disability.

The Commission believes that adequate exercise of the right of boards of education to grant leaves of absence will do much to alleviate the problem of harmful emotional conduct. It can be of real benefit to teachers and provide them the opportunity to be reemployed, if they are able to regain their health.

Boards of education have no power of law to require medical examinations except for the protection of the health of the community. It seems reasonable that when administrators can document instances of behavior detrimental to students that could be caused by physical or mental deficiencies, teachers on both continuing and limited contracts should be required to have examinations by appropriate medical doctors. School physicians should have access to the results of all examinations and make recommendations for retirement and leaves of absence based upon their review and consultation with the examining physician.

It may be argued that the requirement for an examination and subsequent disclosure of its results is an unacceptable invasion of privacy. This objection would aid in focusing attention on the "unprivate" nature of public school teaching.

The Commission recommends:

1. **That teachers be required to have special examinations by medical doctors when requested to do so by the school superintendent with reasons given for the request. These doctors would be selected by teachers from a list provided by the board of education.**
2. **That the board of education pay for the special medical examinations it requests.**
3. **That refusal to be examined or to make results of requested examinations available to the school board be considered a "willful and persistent violation of reasonable regulations of the board of education."**

VII LENGTH OF TENURE

Probationary Period Before Granting Continuing Contracts

Teachers with the required certification may now become eligible for continuing contracts after three years of teaching in a district. Those already on continuing contracts who transfer may be required to teach for two years in their new district before being eligible for its continuing contract.

Fifty-six percent of superintendents surveyed replied that the probationary period should be more than three years. Of these, 42 percent recommended five years. In addition, 84 superintendents or 19 percent replied by saying "no tenure."

Much of the response to this question in the survey appears to be based on strong feelings against any form of tenure and a desire to put off the "evil day" as long as possible. However, many superintendents stated during depth interviews that decisions regarding the potential of all new teachers should be made as early as possible, preferably during the first year, in fairness to both teachers and students. They also emphasized the point that as time goes on it becomes increasingly difficult to explain to a teacher and his friends in the community why he may not be given a continuing contract when he has been allowed to teach for an extended period.

There are some districts where inadequate attention is paid to the beginning teacher. Other districts have carefully planned check points and reviews during early months of employment to help teachers overcome difficulties, measure response to guidance, and evaluate basic aptitudes for a teaching career. The Commission urges that this important aspect of maintaining a high level of teaching quality be given top priority in all districts.

Sixty percent of the superintendents would like more than two years to appraise the teacher who has received a continuing contract in another district before being employed by theirs, 40 percent recommending three years. In this case, 18 percent replied "no tenure."

It is understandable why many superintendents would feel safer if they had a longer period of time to make their determinations regarding continuing contracts. However, the Commission believes that a teacher who has a total of three years, and in some cases five years, of teaching experience should be entitled to a decisive judgment regarding his capability. Furthermore, the Commission believes that the general quality of teachers will be improved by requiring an early decision to avoid the inertia and pressure for retention that develops over a longer period. For these reasons the Commission recommends no change in the length of the probationary period as presently prescribed by law.

Duration of Continuing Contracts

The continuing service status of teachers now ends at age 70, after which they may still be employed.

Superintendents were asked, "In your experience, have there been serious instances where overall performance of teachers has suffered by reason of advanced age?" Three-hundred and forty-eight, or 79 percent, replied "yes."

Two alternatives to the present length of continuing contracts have been considered by the Commission. One is the substitution of limited contracts for continuing contracts at an age earlier than 70. The other is a mandatory retirement age of perhaps 65.

Reducing the length of the continuing contract and permitting the subsequent granting of limited contracts would primarily have the effect of ending the teacher's right to explanation of reasons and to a hearing upon termination of employment. In some cases, the prevention of a hearing could be in the best psychological interest of the teacher at the end of a long career and would be the most humane action. It would, however, be a difficult ruling to justify in terms of individual rights.

In view of the mental and physical demands of teaching and the concern of many superintendents regarding the capability of teachers in the upper age brackets, mandatory retirement at age 65 might be desirable. It would, however, mean the loss of many

teachers whose competence, experience, and leadership qualities are highly valued.

One way of avoiding the complete loss of highly competent teachers through early retirement would be to employ them on a part-time basis. It is now possible for a teacher to resign his continuing contract and accept regular part-time employment on a limited contract. This arrangement could be permitted at the full discretion of boards of education in the case of teachers who reached a new mandatory retirement age. This would enable schools to continue to benefit from the ability and peer influence of exceptional teachers and could be of physical benefit to the teacher.

Although there is much to be said for an earlier retirement age, the Commission believes that a change of this magnitude should not be undertaken until the results of improved administration of teacher employment have been assessed.

If the physical, mental, and instructional capabilities of teachers are carefully appraised and documented; if the law effectively provides for termination of contracts for reasons of professional incompetence; if hearing procedures are workable; if administrators carry out their responsibility for appropriate action to remove incompetent teachers and to retire or grant leaves of absence to teachers with physical and mental disabilities, the capacity to maintain a reasonably high level of teacher quality will be greatly increased. Above all, full understanding on the part of teachers and administrators that continuing contracts are not intended to be "lifetime contracts" is essential to the successful administration of tenure.

VIII COLLECTIVE NEGOTIATIONS

Ohio presently has no statute covering the negotiation of agreements between boards of education and teacher organizations through collective negotiations. Many districts, however, have negotiated such agreements.

Opinions have been expressed that if school districts follow collective negotiation procedures, there will be no need for a law governing the employment arrangements of teachers and boards of education. The Commission has concluded that such a law is needed in any event for the following reasons:

If a certain number of years of probation are desirable before the granting of continuing contracts, this period should be uniform throughout the State. The length of time should not be an item in the bargaining process.

If one hearing procedure seems to be the most useful, the State should be the body so to decide and require. In so doing the State can be mindful of the need for protecting teachers as well as for avoiding the establishment of precedents that may cause difficulty for future boards.

Reasons for termination of teacher contracts should be the same throughout the State and not subject to local negotiations.

The State should retain the power to fix the retirement date of teachers consistent with provisions of the State Teachers' Retirement System and on the basis of statewide assessment of the best interests of all school districts.

IX PERFORMANCE OF ADMINISTRATORS

Many superintendents freely acknowledge that some principals and their assistants are reluctant to recommend the termination of teaching contracts because of personal criticism that may be leveled at them by the teacher and his sympathizers in the course of the teacher's defense. Their fear of such criticism may be lessened by holding hearings before referees rather than boards of education. The important point remains, however, that any administrator is derelict in carrying out a fundamental management responsibility when he refuses to take the personal consequences of affirmative action to improve the quality of his staff. No one should enter or be allowed to stay in administration who is unwilling or unable to accept this greatest single responsibility of school management.

It is also frequently stated that even in cases where teachers are patently incompetent for reasons of personal deficiencies, *appraisals of their difficulties have not been sufficiently documented to provide adequate evidence of cause for dismissal.* There may have been failure to adequately witness and record exhibition of gross inefficiency. In some cases, necessary physical and psychiatric examinations may not have been suggested. Such laxity in administrative practice should not be tolerated.

The misconception that a continuing contract is a lifetime contract has generally been reinforced by administrative inaction. At the same time, it has been easy to shift the blame for inaction to something called tenure.

SUPPLEMENT

Non-Renewal of Limited Contracts

Ohio law does not require that reasons be given to a teacher as to why a limited contract will not be renewed. There is also no legal provision for a hearing in the case of non-renewal of limited contracts although some districts have negotiated provisions for hearings in their contracts with teacher groups.

Some superintendents believe that they should not be required to document reasons why a teacher is not being re-employed because of the necessarily subjective nature of appraisals and the amount of controversy that may result.

As a practical matter, it seems that the administration will always be under pressure to give reasons and, despite the lack of legal requirement, will be forced to do so by community concerns. It is not understandable to most people why reasons will not be given. It also seems appropriate for the superintendent to have an informal discussion of the case with the teacher.

There is much to be said against a requirement for formal legal hearings in the case of teachers whose limited contracts are not renewed. In particular, it seems that reversals of administrative judgment in the case of beginning teachers would be a severe limitation on the authority of the superintendent which would relieve him of much responsiblity for the later performance of his staff. Furthermore, it would tend to increase the number of incompetent teachers who are re-employed because of administrators' concern about the time and effort that might be required for hearings. In addition, it could be a costly undertaking in terms of administrative time and legal counsel.

APPENDIX

CERTIFICATES AND CONTRACTS OF OHIO PUBLIC SCHOOL TEACHERS

CERTIFICATION

Ohio law requires that all teachers who are employed in Ohio's public schools be certified by the State Board of Education.[1]

A teacher must apply for a certificate by "type and grade." There are twelve various "types" of certificates covering classroom teaching in kindergarten, elementary school, and by subject in high school; administrative positions in elementary and high school; supervisory positions on the school district level; positions of superintendent and assistant superintendent; positions in vocational instruction; and positions as educational administrative specialists.[2]

A grade of certificate is issued in each or any of the types. Since September 1935, four grades of certificates have been issued: provisional, professional, permanent, and temporary.[3] Prior to 1935 the Ohio teacher held either a provisional or life certificate.[4] There are still some life certificate holders who are teaching.[5]

Provisional Certificate

This certificate was held by more than 56 percent of certificated personnel in Ohio employed at the beginning of the 1970-71 school year.[6] Requirements include, in most instances, graduation from an approved two or four year college or university. Two year colleges primarily qualify teachers of vocational subjects. A specified pattern of courses in general and professional education is to be a part of the required curriculum. The provisional certificate is issued for four years by the State Board of Education which may renew the certificate for a like period.[7]

Professional Certificate

Requirements for the professional certificate include a 27 month successful teaching experience and completion of an additional 18 semester hours in professional education

and related disciplines.[8] Twenty percent of certificated personnel in 1970-71 held this certificate.[9] It is renewable once every eight years.[10]

Permanent Certificate

The permanent certificate is valid without need of renewal during the active life of the teacher.[11] A master's degree or its equivalent and 45 months of teaching under a professional certificate are required.[12] Thirteen percent of certificated personnel employed in 1970-71 were holders of this certificate.[13]

Temporary Certificate

The temporary certificate is an annually renewable certificate of substandard grade. It is issued by the State Board of Education only at the request of the district superintendent when there is a scarcity of teachers with other certificates.[14] Fewer than seven percent of certificated personnel held this grade of certification in 1970-71.[15]

Life Certificate

The life certificate was issued before 1935. It was similar to the permanent certificate, however, eligibility did not require advanced college courses. In general, a 50 to 100 month period of successful teaching was all that was needed.[16] The life certificate holders made up three percent of 1970-71 certificated personnel.[17]

CONTRACTS

The limited and the continuing contract are the two types which a local school board may enter into with a teacher in Ohio.[18] The superintendent must nominate all teachers who are to be employed for the first time in a district.[19] Teachers who are not nominated by the superintendent for future contracts may be re-employed by a vote of the school board.[20]

Limited Contract

Teachers who hold a provisional or temporary certificate are eligible for a limited contract only.[21] The term of the limited contract may not exceed five years.[22]

If the board of education of any district fails to give written notice on or before April 30th of its intention not to re-employ a teacher under a limited contract, the teacher is automatically re-employed for the succeeding school year.[23]

Continuing Contracts

Teachers who possess a professional, permanent, or life certificate and have taught for three out of the last five years in the school system, are eligible for a continuing contract.[24] A teacher with a continuing contract in one district who transfers to another may be required to teach for two years in the new district before becoming eligible for its continuing contract. The continuing contract remains in effect until the teacher resigns, retires, is retired, or until the contract is terminated by formal dismissal proceedings instituted by the school board. The board may retire a teacher for reasons of permanent physical and mental disability and at age 70.[25]

Teachers eligible for continuing contracts receive continuing contracts if they are recommended for re-employment by the superintendent. The board of education may reject the recommendation by a 3/4 majority vote. The board may also vote to re-employ under a continuing contract by a 3/4 majority vote for a teacher who is not recommended for re-employment by the superintendent. (See R.C. 3319.07 for special provision for local school districts.) The eligible teacher is automatically granted a continuing contract unless notified to the contrary by the board prior to April 30.[26]

Additional Period of Probation

The superintendent has the option of recommending one additional limited contract which may not exceed two

years for the teacher who is eligible for a continuing contract. The superintendent must notify the teacher in writing of his intention with reasons directed toward the teacher's professional improvement on or before April 30.

When this additional probationary limited contract ends, the teacher is automatically re-employed under a continuing contract unless he receives notice from the school board that he is not to be re-employed on or before the 30th of April.[27]

TENURE IN OTHER STATES

Forty states have some form of teacher tenure law. The following is a summary of key provisions of the law in 10 states generally comparable to Ohio.[28] The states included are: California, New York, Pennsylvania, Texas, Illinois, Michigan, New Jersey, Florida, Indiana, and Massachusetts.[29]

Starting Point

Most states require that a teacher work in a school district for three consecutive years before becoming eligible for tenure. Indiana is somewhat stricter as it requires five years of employment with re-election to a sixth year before a teacher is eligible for tenure.[30]

Some states, as in Ohio, relax this period of probation for teachers who have tenure elsewhere in the state. Pennsylvania is the only state, however, which permits a teacher to automatically retain his tenure status upon transfer to another district.[31]

End Point

Continuing contracts of teachers usually remain in effect until retirement. The majority of states have set age 70 as the upper age limit for employment. Tenure ceases in California and Illinois at age 65 and at age 66 in Indiana. In California and Illinois, except Chicago, the teacher may be subsequently employed on an annual basis.[32] Indiana has a similar provision.[33]

Termination

All states have legislated means to terminate tenure protection of teachers who have violated rules of a tenure contract.[34]

Causes

The grounds for termination, included in most state laws, are broadly worded statements. In Michigan, the statement is simply "reasonable and just cause." California and New York list several

specific reasons including incompetence and physical and mental disabilities.[35]

Illinois, California, and New Jersey require that a teacher be notified and given a reasonable period of time in which to remedy his faults, if those faults are generally thought to be correctible. Only if the deficiencies are then not corrected may a school board proceed with official termination action.

Hearings

In most states, as in Ohio, the hearing, if it is requested, is conducted by the local board of education. Committees selected from teachers, administrators, and school board members conduct initial hearings in New York and at the discretion of the school board in Texas. The committee then reports to the local school board which in turn makes ultimate determination of the case.[36] In New Jersey the local school board forwards cases which it believes warrant dismissal to the State Commissioner of Education. The Commissioner may dismiss the charges or the Commissioner or a person appointed by him may conduct a hearing and decide action to be taken.

In California, termination action requires that the superior court appoint referees to hear the case. The referees report back to the court where final judgment is made.

Decision

The two options available to all hearing bodies when they make their findings are to reinstate or dismiss the teachers. New York, Texas, and New Jersey have provided additional alternatives.[37]

In New York, a reprimand or suspension without pay may be considered. The Texas teacher may find that he has been returned to probationary status rather than being dismissed. And in New Jersey, a reduction in pay may be judged to be sufficient punishment for a tenure teacher.

Appeal

Appeal protection is available for teachers in all states but Indiana. Massachusetts and Pennsylvania permit a teacher the

right to begin the whole contract termination proceedings over again in a court of law. In some states, appeals are transmitted to a branch of the individual state's department of education, e.g., the State Commissioner of Education in New York and Texas, and the State Board of Education in New Jersey and Florida.

Michigan has established a tenure commission to act as a board of review for all appeals from local board decisions. The commission is composed of five members: two classroom teachers, one member of a school board of a city or grade-school district, one person who is not a school board member or a teacher, and one school superintendent.[38]

Notes

1. *Page's Ohio Revised Code Annotated* (Cincinnati, 1960), Section 3319.30.

2. *Page's*, Section 3319.22.

3. *Page's*, Section 3319.22.

4. *Page's Ohio General Code Annotated* (Cincinnati, 1931), Section 7807-1.

5. "Elementary and Secondary Principals' Reports - Forms 22 and 23," Ohio Department of Education (Columbus, Fall 1970). Figures include certificated administrators and specialists.

6. "Principals' Reports."

7. *Page's Revised Code*, Section 3319.24.

8. "Ohio Department of Education Laws and Regulations for Adoption by the State Board of Education," Ohio Department of Education, (Columbus, 1970) Page 30 and Page 44.

9. "Principals' Reports."

10. *Page's Revised Code*, Section 3319.25.

11. *Page's Revised Code*, Section 3319.26.

12. "Laws and Regulations," Page 30 and Page 44.

13. "Principals' Reports."

14. "Laws and Regulations," Page 30 and Page 44.

15. "Principals' Reports."

16. *Page's Ohio General Code*, Section 7807-1.

17. "Principals' Reports."

18. *Page's Revised Code*, Section 3319.08.

19. *Page's Revised Code*, Section 3319.07.

20. *Page's Revised Code*, Section 3319.07.

21. *Page's Revised Code*, Section 3319.11.

22. *Page's Revised Code*, Section 3319.08.

23. *Page's Revised Code*, Section 3319.11.

24. *Page's Revised Code*, Sections 3319.11 and 3319.08.

25. *Page's Revised Code*, Sections 3319.08 and 3319.37.

26. *Page's Revised Code*, Section 3319.11.

27. *Page's Revised Code*, Sections 3319.11 and 3319.07.

28. "Teacher Tenure and Contracts" Research Report 1971-R3 National Education Association, (Washington, 1971)

29. "U.S. Census — Ranking of States by Population: 1960 and 1970," U.S. Department of Census (Washington, 1970)

30. "Teacher Tenure" and *Page's* Section 3319.11.

31. "Teacher Tenure" and *Page's* Section 3319.11.

32. "Teacher Tenure" and *Page's* Section 3319.37.

33. *Burns Indiana Statutes Annotated* and *Page's* Section 3319.37.

34. "Teacher Tenure" and *Page's* Section 3319.16.

35. "Teacher Tenure" and *Page's* Section 3319.16.

36. "Teacher Tenure" and *Page's* Section 3319.16.

37. "Teacher Tenure" and *Page's* Section 3319.16.

38. "Teacher Tenure" and *Page's* Section 3319.16.

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